

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TOLLBROOK, LLC,

Plaintiff,

v.

CITY OF TROY,

Defendant.

Case No.

Hon.

(previously Oak. Co. Cir. Ct.)

Case No. 2020-181893-CZ

Hon. CHERYL A. MATTHEWS

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NOTICE OF REMOVAL

Defendant CITY OF TROY (“Defendant” or “City”), through its undersigned counsel, hereby removes this action from the Oakland County Circuit Court, Michigan, to the United States District Court for the Eastern District of Michigan. This removal is made pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, and it may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 as set forth below.

THE REMOVED ACTION

2. Plaintiff's action was commenced in the 6th Circuit Court, County of Oakland, Michigan entitled TOLLBROOK LLC, v City of Troy, case number 2020-181893-CZ, assigned to the Honorable Judge Cheryl A. Matthews.

3. Defendant was served on June 26, 2020 with the attached Summons and Complaint. (Exhibit 1).

4. There is also a companion case entitled TOLLBROOK WEST, LLC v. City of Troy, case number 2020-181895-CZ assigned to the Honorable Judge Leo Bowman of the 6th Circuit Court in Oakland County, Michigan. (Exhibit 2).

5. Additionally, an appeal of a decision of the Troy Board of Zoning Appeals involving the same litigants is pending in the 6th Circuit Court, County of Oakland, Michigan entitled TOLLBROOK LLC v City of Troy, case number 2020-178896-CZ, which has been consolidated with a case entitled TOLLBROOK WEST, LLC v. City of Troy which was given

case number 2020-178899-CZ. These consolidated appellate matters are assigned to the Honorable Judge Jeffery Matis.

6. No other pleadings, process, orders, or other documents have been filed in the state court.

7. The parties to the instant action, TOLLBROOK LLC, v City of Troy, were previously involved in litigation originally filed in this Court, case number 17-11417, assigned to the Honorable Judge Mark A. Goldsmith.

8. This Notice of Removal is being filed within 30 days after receipt by Defendant of Plaintiff's Complaint as required by 28 U.S.C. § 1446(b).

9. The Complaint alleges a federal question over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10. The Complaint also alleges state law claims over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

11. Plaintiff's Complaint alleges a substantive due process violation based on the City's denial of its request to conditionally rezone property. Plaintiff alleges that the City's application of its Zoning Ordinance and its decision to reject Plaintiff's conditional rezoning was arbitrary and capricious and denied Tollbrook due process of law. (Exhibit 1, Complaint, Count 2, paragraphs 48-49 –Violation of Substantive Due Process). These

issues concerning the conditional rezoning application were previously litigated by the parties in Federal Court both in the Eastern District of Michigan and on appeal to the Sixth Circuit Court of Appeals. (Exhibit 3, Opinion and Order, case number 17-11417; Exhibit 4, Judgment; Exhibit 5, Opinion issued May 21, 2019, Sixth Circuit Court of Appeals, case number 18-1139, affirming Opinion and Order in originating case number 17-11417).

12. Plaintiff's state law claims arise from the same common nucleus of operative facts and are so intertwined and related to Plaintiff's federal claims that they form part of the same case or controversy; namely Plaintiff's allegations that the City's denial of the rezoning request fails to advance a legitimate governmental interest and interferes with the Plaintiff's economically viable use of the property. (See *e.g.* Complaint at ¶¶ 34, 36, 38, 40).

13. Venue is proper under 28 U.S.C. § 1391 because Oakland County is within the Eastern District of Michigan.

14. Pursuant to 28 U.S.C. § 1446(d), City will provide written notice to all adverse parties of the filing of this notice of removal and will file a

copy of this notice of removal with the Circuit Court for the County of Oakland.

Defendant files this notice of removal and removes this action to the United States District Court for the Eastern District of Michigan. Plaintiffs are notified to proceed no further in state court unless this case is remanded by order of the U.S. District Court.

Dated: July 17, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2020, I electronically filed the Troy Defendants' Notice of Removal and all Exhibits along with this Proof of Service with the Clerk of the Court for the United States District Court for the Eastern District of Michigan, Southern Division using the ECF system, and that the ECF system will electronically notify the parties of record including Robert Carson and David Schlackman, Attorneys for the Plaintiffs, Tollbrook, LLC and Tollbrook West, LLC.

s/Julie Quinlan Dufrane
JULIE QUINLAN DUFRANE